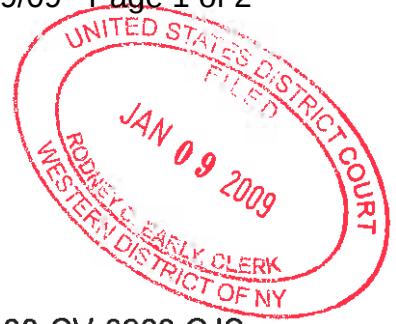


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



DEEPAK C. FADIA,

Plaintiff,

No. 08-CV-6268 CJS

-vs-

DECISION AND ORDER

NEW HORIZON HOSPITALITY,

Defendant.

On August 18, 2008, this case was referred to the Honorable Marian W. Payson, United States Magistrate Judge, for the handling of all non-dispositive pretrial motions. A motion for appointment of counsel is such a motion. On October 28, 2008, Magistrate Judge Payson issued a Decision and Order [#11] denying Plaintiff's motion for appointment of counsel [#10]. On December 5, 2008, the Court received a letter from Plaintiff, addressed to the undersigned, requesting appointment of counsel. The Court will construe Plaintiff's application [#16] as an objection to Magistrate Judge Payson's Decision and Order.


Pursuant to Rule 72(a) of the Federal Rules of Civil Procedure and Title 28 U.S.C. § 636(b)(1)(A), this Court may review non-dispositive matters previously decided by a magistrate judge and set them aside if they are clearly erroneous or contrary to law. FED. R. CIV. P. 72(a); 28 U.S.C. § 636(b)(1)(A) (2002). A finding is clearly erroneous if, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948).

Plaintiff has not shown that Magistrate Judge Payson's ruling was clearly erroneous or contrary to law. Therefore, Plaintiff's objection [#16] is denied. It is Plaintiff's responsibility to either retain his own attorney or to represent himself in this action. Either way, Plaintiff must comply with the scheduling deadlines set by Magistrate Judge Payson.

So Ordered.

Dated: Rochester, New York
January 5, 2009

ENTER:



CHARLES J. SIRAGUSA
United States District Judge